

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**FILED**

MAR 10 2016

UNITED STATES OF AMERICA

v.

MARCOS MENDEZ

CASE NUMBER:
UNDER SEALTHOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

CRIMINAL COMPLAINT

16CR 163
MAGISTRATE JUDGE MASON

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about May 23, 2015, at Rosemont, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant(s) violated:

*Code Section*Title 18, United States Code, Section
2251(a)*Offense Description*

use of a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct

This criminal complaint is based upon these facts:

X Continued on the attached sheet.



JENNIFER S. FINERTY
Special Agent, Homeland Security Investigations

Sworn to before me and signed in my presence.

Date: March 10, 2016

City and state: Chicago, Illinois



Judge's signature

MICHAEL T. MASON, U.S. Magistrate Judge

Printed name and Title

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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AFFIDAVIT

I, JENNIFER S. FINERTY, being duly sworn, state as follows:

1. I am a Special Agent with Homeland Security Investigations, and have been so employed for approximately 12 years. My current responsibilities include the investigation of child exploitation and child pornography offenses.

2. This affidavit is submitted in support of a criminal complaint alleging that MARCOS MENDEZ has violated Title 18, United States Code, Section 2251(a). Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging MENDEZ with manufacturing child pornography, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the defendant committed the offense alleged in the complaint.

3. This affidavit is based on my personal knowledge, information provided to me by other law enforcement agents and from persons with knowledge regarding relevant facts.

Facts Supporting Probable Cause

4. Based upon my training and experience, I know that the Office of Field Operations of Customs and Border Protection (CBP) conducts border searches of electronic devices carried into the United States by travelers. To conduct these

border searches, CBP officers have access to DOMEX (Document and Media Exploitation) equipment that can be used on outbound and inbound travelers examined at ports of entry.

5. On or about February 20, 2016, MARCOS MENDEZ arrived at Chicago O'Hare International Airport from Ecuador aboard Copa Airlines flight CM 235. When MENDEZ attempted to clear customs, CBP officers conducted a border examination of MENDEZ and his belongings. During his customs interview, MENDEZ told CBP that he lived at an address in Rosemont, Illinois (the Subject Premises). CBP officers began by turning on MENDEZ'S phone, which was an Apple iPhone 6S, model number MKRY2LL/A, serial number FK3QD505GRY9 (the Subject Phone) and attempting to view photographs. At that time, CBP officers saw multiple videos and photos they suspected were child pornography.

6. Specifically, CBP officers provided the following information to me: While examining the Subject Phone on or about February 20, 2016, CBP Officers Baumgart, Callison, Cislak, and Alikhan found approximately five photos and two videos stored in an iSafe application.¹ In one video, the male appeared to be recording the video as he was having sex with a young girl from behind. In the second video, a young girl, approximately 10-11 years old, was having oral sex with the adult male and then going back and forth to a young male around her age. After this, the young girl lay on her back and the adult instructed the boy on how to

¹ Based on my conversation with the Chicago HSI Computer Forensics Coordinator Kevin Gerlock, I understand that iSafe is a series of applications to keep data secure on phones.

have intercourse with the girl. Some of the photos in the iSafe application appeared to contain child pornography.

7. A CBP officer further reported that while DOMEXing the Subject Phone, officers found photographs containing child erotica featuring minor female girls. There were also more than 50 photos that depicted the same minor female sleeping, and, in some photos, with her genitals exposed. DOMEX could not access the videos and photos stored in the iSafe application.

8. Following their examination of the phone, CBP officers detained the phone, but allowed MENDEZ to clear customs and leave O'Hare.

9. On or about February 21, 2016, HSI Special Agent Mark Wasunyk responded to Chicago O'Hare International Airport to take custody of the Subject Phone. Special Agent Wasunyk attempted to turn on the Subject Phone from sleep mode and observed the welcome screen of the phone. Based on the welcome screen greeting, and based on his training and experience, Agent Wasunyk determined that someone had erased the Subject Phone remotely.

10. On or about February 21, 2016, SA Wasunyk delivered the Subject Phone to the HSI O'Hare Office, 2340 S. River Rd. Ste. 215, Des Plaines, IL 60018. The Subject Phone was logged into evidence under inventory number 2838570.

11. On or about February 29, 2016, Investigator Anthony Stack from the Cook County Sheriff's Police and I reviewed images that had been extracted from the Subject Phone via DOMEX prior to it being erased and located at least 50 images of possible child pornography. A sample of these images includes the

following, all of which appear to include the same pre-pubescent girl, who appears to be between 3 and 5 years old (Victim A):

- a. A JPEG image with the file name “22426_5003.JPG” depicting Victim A nude from the waist down exposing her genitalia. A pink blanket is depicted in this image;
- b. A JPEG image with the file name “22400_5003.JPG” depicting Victim A nude from the waist down with her knees up and legs spread exposing her genitalia. A pink blanket is depicted in this image over Victim A’s chest and above. There is also a white towel depicted under Victim A’s buttocks;
- c. A JPEG image with the file name “22406_5003.JPG” depicting Victim A nude from the waist down with her knees up and legs spread exposing her genitalia. A pink blanket is depicted in this image over Victim A’s chest and above. The top of her face is barely visible. Victim A is laying on a bed that has an olive green comforter/blanket and an olive green towel on it. A small white hand towel is depicted under Victim A’s buttocks. Also seen in the picture and positioned close to Victim A is a two-headed dildo/phallic shaped object laying on the bed;
- d. A JPEG image with the file name “22408_5003.JPG” depicting Victim A nude from the waist down with her knees up and legs spread exposing her genitalia and buttocks. A pink blanket is

depicted in this image over Victim A's chest and above. Victim A is lying on her back. A white towel is depicted under Victim A's buttocks. This picture is taken very close up where the genitalia is the focus of the image;

e. A JPEG image with the file name "IMG_2429.JPG" depicting Victim A with her legs spread, and her genitalia exposed. Victim A is depicted lying next to an adult female who is wearing a red nightgown. A pink blanket is depicted across Victim A's chest and partially covering her face;

f. A JPEG image with the file name "22389_5003.JPG" depicting Victim A nude from her waist down, with her genitalia exposed and an adult index finger touching her genitalia. The pink blanket is also in this picture.

12. Since on or about February 21, 2016, the Subject Phone has been in the government's custody.

13. On or about February 26, 2016, HSI O'Hare Agents confirmed through the Law Enforcement Agencies Database System that MENDEZ was convicted of Endangering the Life/Health of a Child on or about January 7, 2011 in the Circuit Court of Kane County, Illinois. MENDEZ was sentenced to 24 months of probation and ordered to participate in a sex offender evaluation and recommended treatments by the court. MENDEZ'S probation expired on January 6, 2013.

14. On or about March 7, 2016, Investigator Stack looked at MENDEZ'S public Facebook page and through his Facebook friends. Stack found a woman resembling the adult female depicted in the image on the Subject Phone referenced in paragraph 11(e) (Individual A). In addition, some of the non-pornographic photographs from the Subject Phone were also posted on the woman's Facebook page.

15. On or about March 9, 2016, Investigator Stack obtained from the Illinois Secretary of State a driver's license photo for Individual A. According to her driver's license, she resides in Hoffman Estates, Illinois. Individual A's public Facebook page also references a granddaughter. Many photos posted of the granddaughter, from when she was a baby onward, depict what appears to be the same pink blanket in the photos on the Subject Phone with Victim A. Based on this, I and other law enforcement believe that this girl may be Victim A. However, we cannot be certain because Victim A's face is not fully visible in the pornographic images.

16. On or about March 9, 2016, all of the images recovered on the Subject Phone were run through ExifToolGUI v3.38, a tool that allows investigators to view metadata inside many file types, including JPEG images. I viewed the results of this analysis. It showed the creation dates and geolocation data (latitude and longitude coordinates) for many of the photographs, including but not limited to the following:

a. The JPEG image with the file name “IMG_2429.JPG,” referenced above in paragraph 11(e), was created on or about 5/23/2015 with an iPhone 5S, at a location approximately 144 feet from the Subject Premises (lat: 42.007236, long: 87.889350).

b. A JPEG image with the file name “1512~IMG_6218.JPG” depicts Individual A, with what appears to be the same dildo that is referenced above in paragraph 11(c). This image was created on or about 8/10/2015 with an iPhone 5S, and approximately 95 feet from the Subject Premises (lat: 42.007375, long: 87.889367).

c. A JPEG image with the file name “6348~FullSizeRender” depicts Individual A in Christmas-themed lingerie. This image was created on 12/25/2015 with an iPhone 6S, and approximately 105 feet from the Subject Premises (lat: 42.00769, long: 87.889381).

17. Based on my training and experience, I know that iPhones are not manufactured in Illinois.

18. Therefore, based on the above information, I respectfully submit that there is probable cause to believe that on or about May 23, 2015, MARCOS MENDEZ manufactured child pornography in violation of Title 18, United States Code, Section 2251(a).

FURTHER AFFIANT SAYETH NOT.

Jennifer S. Finerty
JENNIFER S. FINERTY
Special Agent, Homeland Security
Investigations

SUBSCRIBED AND SWORN to before me on March 10, 2016.

Michael T. Mason
MICHAEL T. MASON
United States Magistrate Judge